

**UNITED STATES DISTRICT COURT**

# DISTRICT OF NEVADA

JUSTINE MCMULLEN, an individual, on behalf of herself and those similarly situated;

Case No.: 2:16-cv-01646

Plaintiffs,

VS.

HUNTER WARFIELD OF NEW ENGLAND,  
INC., a Florida corporation,

## PRELIMINARY APPROVAL ORDER

Defendant.

Plaintiff Justine McMullen (“Plaintiff”) and Defendant Hunter Warfield of New England, Inc. (“Defendant”) have filed a Joint Motion for Preliminary Approval of Class Action Settlement. The Court has read and considered the joint motion, the settlement agreement and its amendments thereto (“Agreement”), and the record. The Court grants the joint motion.

IT IS ORDERED as follows:

1. JURISDICTION: The Court has jurisdiction over the subject matter of the Lawsuit, and for purposes of settlement only, this Court has personal jurisdiction over Plaintiff, Defendant and all the Settlement Class members.

2. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT: The Court preliminarily finds that the settlement of the Lawsuit (“Settlement”), on the terms and conditions set forth in the Agreement and the Exhibits thereto, is in all respects fundamentally fair, reasonable, adequate and in the best interests of the Class members, taking into consideration the benefits to Class members; the strength and weaknesses of Plaintiff’s case; and Defendant’s defenses, the complexity, expense and probable duration of further litigation; and the risk and delay inherent in possible appeals. The Court finds that notice of the Settlement should be given to persons in the

1 Class and a full hearing should be held on approval of the Settlement.

2 3. CAFA NOTICE: As set forth in the Agreement, Defendant through counsel will  
3 notify the appropriate state and federal officials in compliance with the Class Action Fairness Act  
4 of 2005, Pub. L. No. 109-2, 119 Stat. 4 and prepare a certificate of compliance with same.

5 4. THE CLASS: On June 4, 2015, the Court preliminarily finds that the Lawsuit  
6 satisfies the applicable prerequisites for class action treatment under Federal Rule of Civil  
7 Procedure 23(a) and 23(b)(3), of the following class members:

8 all Nevada residents who (i) on or after July 13, 2015 through May 10, 2017 (ii)  
9 were sent a collection letter in the form of Exhibit 1, attached to the First Amended  
10 Complaint, from Defendant Hunter Warfield (iii) which was not returned as  
11 undeliverable by the U.S. Post Office (iv) in an attempt to recover an alleged  
12 obligation incurred for personal, family, or household purposes.

13 Based on Defendant's records as of May 10, 2017, there are 557 persons in the Class. A copy of  
14 Exhibit "1" is attached hereto and is incorporated herein by reference.

15 5. CLASS REPRESENTATIVE, CLASS COUNSEL AND SETTLEMENT  
16 ADMINISTRATOR APPOINTMENT: The Court preliminarily finds that Plaintiff Justine  
17 McMullen adequately represents the interests of the Class and appointed her as the Class  
18 Representative. The Court also finds that O. Randolph Bragg of Horwitz, Horwitz, & Associates  
19 Ltd. and Keren E. Gesund of Gesund and Paillet, LLC are adequate to act as counsel for the Class  
20 and appointed them as Class Counsel. For purposes of preliminary approval, the Court approves  
21 First Class, Inc. ("FCI"), to act as the Settlement Administrator and carry out the responsibilities  
22 assigned to it under the Agreement.

23 6. NOTICE OF SETTLEMENT: The Court approves the form and method of notice  
24 set forth in the Agreement and finds that the form and method of notice set forth in the Agreement  
25 satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, and  
26 constitutes the best practicable procedure under the circumstances. Defendant shall provide a class

1 list, containing each settlement class members' last known address as reflected in Defendant's  
2 records, to FCI and to Class Counsel. Before sending the notice, FCI shall run the address of each  
3 person in the class list through the National Change of Address (NCOA) database/registry. Within  
4 forty-five (45) days following entry of this order, FCI shall send via first class U.S. mail the Notice  
5 of Settlement to each person in the class list, at their most recent known address, and will forward  
6 any notice that is returned with a forwarding address within fourteen (14) days of receiving the  
7 returned mail and will update the Class member address list with all forwarding addresses. At least  
8 ten (10) days before the Final Approval Hearing, the FCI shall file a declaration of compliance with  
9 the notice procedures set forth in the Agreement.

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11 7. SETTLEMENT AND CLAIMS PROCESS: The Court preliminarily approves the  
12 consideration of, \$21,000, which is at least the net worth of Defendant, approximately \$37.70 to  
13 each member of the Class (provided there are no opt-outs; if there are opt-outs, this amount will be  
14 recalculated for a pro rata distribution), as fair, reasonable, and adequate. : The Court also  
15 preliminarily approves the payment of additional amounts for the costs of notice and administration,  
16 statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2), an incentive award of  
17 \$3,000.00 to the Class Representative, and any attorney's fees, costs or expenses that the Court  
18 may award to Class Counsel.

19  
20 8. EXCLUSIONS: Any Class member who desires to be excluded from the Settlement  
21 Class must send a written request for exclusion to FCI, with a postmark date no later than one-  
22 hundred five (105) days after the entry of this order. FCI's address shall be provided in the Notice  
23 of Settlement mailed to the Class Members. The Claims Administrator shall provide a list of those  
24 persons requesting exclusion to Class Counsel and to Defendant's counsel after the deadline for  
25 exclusions passes, but no later than ten (10) days before the Final Approval Hearing. A copy of that  
26 list will be filed with the Motion for Final Approval of the Class Action Settlement.

1           To be valid, a request for exclusion must be personally signed by the member of the Class  
2 requesting exclusion and must include: (i) name, address and telephone number; (ii) a sentence  
3 stating that he or she is in Class; and (iii) the following statement: "I request to be excluded from  
4 the class settlement in McMullen vs. Hunter Warfield of New England, Inc., United States  
5 District Court for the District of Nevada, Case No. 2:16-cv-01646", or words to that effect.  
6

7           9.       Any Class member who submits a valid and timely request for exclusion shall not  
8 be a member of the Class, and shall not be bound by the Settlement. All Class members who do not  
9 request exclusion from the Class will be bound by all determinations and judgments in this case  
10 concerning the Settlement, including, but not limited to the validity, binding nature and  
11 effectiveness of the release set forth in paragraph 21 of the Agreement.  
12

13           10.      OBJECTIONS: Any Class member who intends to object to the fairness of the  
14 Settlement must file a written objection with the Clerk of the United States District Court, for the  
15 District of Nevada, 333 Las Vegas Blvd. South, Las Vegas, NV 89101 no later than one hundred  
16 five (105) days after the entry of this order. Further, any such Class Member must, within the same  
17 time period, provide a copy of the written objection to Class Counsel and Defense Counsel, whose  
18 addresses shall be set forth in the Notice of Settlement advising the Settlement Class members  
19 about objections.  
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21           11.      To be considered, the written objection must be signed by the Class member and  
22 state: the Class member's full name, address, and telephone number, the reasons for the objection,  
23 the identity of witnesses whom the objector may call to testify at the Final Approval Hearing, copies  
24 of exhibits the objector may seek to offer into evidence at the Final Approval Hearing, and whether  
25 the objector intends to appear at the Final Approval Hearing on his own behalf or through counsel.  
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27           12.      Any Class member who does not file a valid and timely objection to the Settlement  
28 shall be barred from seeking review of the Settlement by appeal or otherwise.  
29

1           13. The costs of notice and settlement administration will be paid by Defendant.

2           14. FINAL APPROVAL HEARING: The Court shall conduct a hearing (hereinafter the  
3 "Final Approval Hearing") on February 23, 2018 at 9:00 AM in Courtroom 6D of the United  
4 States District Court for the District of Nevada, located at 333 Las Vegas Blvd. South, Las Vegas,  
5 NV 89101.

6           The Final Approval Hearing may be rescheduled or continued by the Court without further  
7 notice to the Class members. At the hearing, the Court will consider the following issues:

8           a. Whether the proposed Settlement is fundamentally fair, reasonable, adequate, and in the  
9 best interest of the Class members and should be approved by the Court;  
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11           b. Whether the Final Judgment and Order of Dismissal With Prejudice, as provided under  
12 the Agreement, should be entered, dismissing the Lawsuit with prejudice;  
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14           c. Such other issues as the Court deems appropriate.).

15           15. No later than thirty (30) calendar days after entry of this Order, Class Counsel will  
16 apply to the Court for an award of attorneys' fees and costs pursuant to Rule 23(h).

17           16. Attendance at the Final Approval Hearing is not necessary. Class members need not  
18 appear at the hearing or take any other action to indicate their approval of the proposed Settlement.  
19 However, Class members wishing to be heard are required to indicate in their written objection  
20 whether they intend to appear at the Final Approval Hearing.

21           17. If the Agreement is not finally approved for any reason, then this Order shall be  
22 vacated, the Agreement shall have no force and effect, and the Parties' rights and defenses shall be  
23 restored, without prejudice, to their respective positions as if the Agreement had never been  
24 executed and this order never entered.

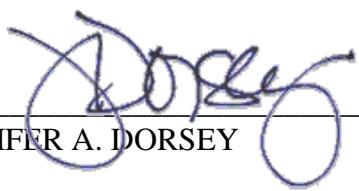
1           18. The Court retains continuing and exclusive jurisdiction over the action to consider  
2 all further matters arising out of or connected with the settlement, including the administration and  
3 enforcement of the Agreement.

4           19. All other proceedings in the Litigation are stayed except as may be necessary to  
5 implement this order or comply with the terms of the Agreement.

6           20. The parties must file their motion for final approval of the settlement by February 2,  
7 2018.

8 IT IS SO ORDERED.

9 Dated: 9/8/2017

  
JENNIFER A. DORSEY

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